IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 31476 of 2006(V)

PETITIONER:

DASAN, S/O. KUTTUKKARAN CHANTHU,
CHETTUPUZHA DESOM, PULLAZHI VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENT:

PAVIYOLA, W/O. CHITTILAPPILLY KOCHAPPAN,
CHETTUPUZHA DESOM, PULLAZHI VILLAGE,THRISSUR TALUK

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ALONG WITH W.P.9C)31660/06ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.31476 &
W.P.(C)NO.31660OF 2006

DATED THIS THE 29th DAY OF NOVEMBER, 2006

JUDGMENT

Petitioner is the defendant in O.S.2596/04 on the file of Musniff Court, Thrissur. Respondent is the plaintiff. Respondent instituted the suit seeking a decree for permanent prohibitory injunction restraining petitioner from trespassing into plaint C schedule way or obstructing respondent from using C schedule way. Along with the suit respondent filed an application under Order XXIX Rule 1 of C.P.C. seeking an order of temporary injunction. The Court granted an order of temporary injunction and also directed the parties to maintain status quo as reported by the Commissioner. Subsequently, Commissioner inspected the property twice and submitted two other reports showing that construction was made in the C schedule property. Respondent filed I.A.9777/04 under Order XXXIX Rule 2 of C.P.C. for taking action against the petitioner for the construction made in the 'C' schedule property in violation of the order of injunction. I.A.3797/05 was filed for interlocutory mandatory injunction to demolish the said construction made. Under Ext.P11 order, Munsiff found that in violation of the order of injunction, petitioner has constructed a wall across plaint C schedule way

and therefore allowed applications and directed that petitioner be detained in civil prison for a period of three months and his property be attached. Court also directed petitioner to remove the construction made in violation of the order of injunction. Petitioner challenged the said orders in C.M.A.137/05 and C.M.A.138/05 before Addl. District Court, Thrissur. As per Ext.P12 order, learned Addl. District Judge modified Ext.P11 order. Petitioner was directed to maintain status quo as on the date of the suit by removal of the construction effected by him, in violation of the order of interim prohibitory injunction, on or before 30.11.2006 at his expense and on his non compliance of the same, construction shall be demolished at his expense and he is liable to be detained in civil prison for a period of fifteen days. The orders are challenged separately in these writ petitions.

2. Argument of learned Counsel appearing for petitioner was that in the plaint, property of the petitioner was not specifically described and only the plaint A schedule property belonging to respondent and C schedule way which leads to B schedule property was shown and the construction directed to be demolished was made by petitioner in his property and therefore there is no violation of the order as found by the Courts below and therefore the orders are to be quashed. Learned Counsel finally submitted that evenif it is found that petitioner made some construction, it was under misconception that petitioner is entitled to construct in his property and

as the property of petitioner has not been identified by the Commissioner, the construction need not be demolished at this stage and the order has to be modified.

3. Exts. P11 and P12 orders with the reports submitted by the Commissioner establish that when the Commissioner first inspected the property, there was no construction in the plaint C schedule way. It is also clear that when the Commissioner inspected for the second time, a pit was found constructed and plantains were planted in the plaint C schedule way. It is further clear that when the Commissioner inspected for the third time, a wall was found constructed in the C schedule way. In such circumstances, I find no reason to interfere with Ext.P12 order passed by the District Court. Petitioner is granted time upto 12.12.2006 to remove the construction and if not, the direction in Ext.P12 would came into force.

M.SASIDHARAN NAMBIAR,JUDGE

Acd